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MAILED
OCT 04 2010
OFFICE OF PETITIONS

In re Patent No. 7,757,066 : DECISION ON REQUEST
Jarvis et al. : FOR
Issue Date: July 13, 2010 : RECONSIDERATION OF
Application No. 09/751,372 : PATENT TERM ADJUSTMENT
Filed: December 29, 2000 : and
Atty Docket No. 00-BN-051 : NOTICE OF INTENT TO ISSUE
(STMI01-00051) : CERTIFICATE OF CORRECTION

This is a decision on the petition pursuant to 37 C.F.R. § 1.705(d), filed on July 21, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two thousand, seven hundred and twenty-one (2721) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand, seven hundred and fifty-nine (1759) days is **GRANTED to the extent indicated herein.**

A review of the record indicates that this patent is not subject to a terminal disclaimer.

This patent issued on July 13, 2010, with a patent term adjustment of 2644 days.

The Office has determined that the patent term adjustment for the above-identified patent is **1759 days**.

First, it is noted that the PAIR calculations do not show line 30: a non-final office action was mailed on January 13, 2005.

Second, the Office properly accorded an eight-day reduction pursuant to 37 C.F.R. § 1.704(c)(8): a response to a non-final office action was received on January 3, 2006, and a supplemental response was received eight days later on January 11, 2006. Moreover, the Office failed to accord a 90-day reduction pursuant to 37 C.F.R. § 1.704(c)(7): a reply containing an omission was received on January 11, 2006. Ninety days later, a response was received on April 11, 2006. These two separate periods of delay, when added together, total 98 days.¹

Third, a notice of appeal was filed on April 2, 2007, and a decision by the Board of Patent Appeals and Interferences was mailed 962 days later on November 19, 2009, reversing the examiner. This constitutes an adjustment to the patent term of 963 (not 962) days,² pursuant to 37 C.F.R. § 1.703(e), since the date on which the notice of appeal was filed is included in the period.

Fourth, it follows that the period of examination delay totals 1591 (628 + 963) days and the period of applicant delay totals 153 (6 + 35 + 6 + 8 + 90 + 4 + 4) days. Moreover, the Office agrees that the over three year period totals 2388 days.³ However, the appellate period is excluded from the over three period to arrive at the B-delay.

A first notice of appeal was filed on August 26, 2004 (not April 24, 2004)⁴, and a non-final office action was mailed on January 13, 2005. The 141 days of the over three year period consumed by appellate review, beginning on August 26, 2004 and ending on January 13, 2005, are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii).

A second notice of appeal was filed on April 2, 2007, and a Decision on Appeal was mailed on November 19, 2009. The 963 days of the over three year period consumed by appellate review, beginning on April 2, 2007 and ending on November 19, 2009, are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii).

¹ Petition, paragraph 8.

² Petition, paragraph 11.

³ Petition, paragraph 12.

⁴ Petition, paragraph 13.

It follows that the period of exclusion, 1104⁵ (141 + 963) days is deducted from the period of B-delay, and not added thereto.⁶

The Office has determined that the period of overlap totals 963 days. It follows that the period of B delay is 321 days: 2388 days over three years minus 1104 days that are excluded minus 963 days of overlap.

As such, the patent term adjustment is increased by 1759 (1591 examination delay plus 321 B-delay minus 153 Applicant delay) days, not 2721 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or Patentee an opportunity to be heard. Accordingly, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

This patent is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, seven hundred and fifty-nine (1759) days**.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this patent, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to the address which appears on the petition. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this patent unless Change of Correspondence Address, Patent Form (PTO/SB/123) is

⁵ Petitioner has calculated the period that was consumed by appellate review to be 1284 days. See petition, paragraph 13.

⁶ Petition, paragraphs 13 and 14.

submitted for the above-identified patent. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/123), may be found at
<http://www.uspto.gov/web/forms/sb0123.pdf>.

If appropriate, a change of fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540.

A blank fee address form may be found at
<http://www.uspto.gov/web/forms/sb0047.pdf>.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

cc: William A. Munck
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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,757,066 B2

DATED : July 13, 2010

DRAFT

INVENTOR(S) : Jarvis et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 2644 days

Delete the phrase "by 2644 days" and insert – by 1759 days--